

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9185 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HALOL NAGAR PALIKA

Versus

PRADEEPSINH RANVEERSINH DODIYA

Appearance:

MR BN PATEL for Petitioner

MR RC PATHAK for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 17/04/96

ORAL JUDGMENT ;

1. The respondent joined the services of Halol Nagar Panchayat on 1-1-83 as an Overseer. He remained on leave without pay from 1-4-84 to 31-12-86 and for the period from 1-1-87 to 30-6-92 he preferred a Recovery Application No.361 of 1992 before the labour Court at Godhra claiming that he had not been paid the salary for

the aforesaid period by the Halol Nagar Panchayat. The respondent felt aggrieved against his oral termination from the services of Halol Nagar Panchayat from March 1992 and for that purpose an industrial dispute was raised by the respondent and the same was referred for adjudication to the Labour Court being Reference (LCG) No.407 of 1993. The learned counsel for the respondent has failed to explain as to how he could claim salary in the Recovery Application for the period upto 30-6-92 while in the dispute, which has been referred, he had raised the grievance against his oral termination of March, 1992.

2. During the pendency of the dispute in the Reference before the Labour Court, Godhra, Halol Nagar Panchayat was converted into Halol Nagar Palika on 15-4-94. On 15-7-94 the respondent had moved an Application for substituting Halol Nagar Palika as a party in the Reference in place of Halol Nagar Panchayat because the Nagar Panchayat had been converted into Nagar Palika. The dispute was decided by the Labour Court, Godhra on 19-11-94 granting relief of reinstatement with full backwages.

3. Halol Nagar Palika preferred Application dated 9/11-1-95 being Misc. Application No.2 of 1995 for setting aside the Award dated 19-11-94 because it had been passed as an ex parte Award since the proceedings were not attended after the conversion of Nagar Panchayat into Nagar Palika. The petitioner-Nagar Palika has come with a case that no notice was served by the Labour Court upon the Halol Nagar Palika and the advocate, who was already appearing in these proceedings, ceased to represent the Nagar Palika thinking that the authority given by the Nagar Panchayat had come to an end with the conversion of Nagar Panchayat into Nagar Palika and, therefore, he could not have appeared unless authorised by the Nagar Palika in this behalf. The proceedings, therefore, remained unattended on behalf of the Nagar Palika and the ex parte Award dated 19-11-94 had been passed and hence the Misc. Application No.2 of 1995 was moved. This Application moved by the Halol Nagar Palika for setting aside the ex parte Award was rejected by the Labour Court vide order Annexure 'D' dated 6-10-95. It may also be pertinent to mention that the Recovery Application No.361 of 1992, which had been filed by the respondent claiming wages for the period from 1-1-87 to 30-6-92, had also been decided ex parte by the Labour Court, Godhra on 28-12-94, but that is not the subject matter of the present Special Civil Application, because the Application for setting aside this order dated

28-12-94, as moved by the Halol Nagar Palika, is pending before the concerned Court, which passed the order in the recovery proceedings.

4. So far as the present petition is concerned, the grievance of the Halol Nagar Palika is that the ex parte Award dated 19-11-94 should have been set aside by the Labour Court, Godhra and its Application for setting aside the ex parte Award should have been accepted and, therefore, Halol Nagar Palika is aggrieved from the order dated 6-10-95 passed by the Labour Court rejecting their Misc. Application No.2 of 1995 read with Award dated 19-11-94.

5. The respondent has filed an affidavit-in-reply dated 15-11-95 and to which a Rejoinder affidavit dated 9-4-96 has also been filed.

6. The respondent is contesting the claim of the petitioner on the ground that it was the fault of the lawyer of the Halol Nagar Panchayat, who had ceased to appear in the proceedings and it is a case of negligence on the part of the present petitioner and its predecessor in title, if the proceedings were not attended before the Labour Court in the dispute which had been raised by the respondent-workman and once an ex parte Award had been passed and the negligence on the part of the petitioner or its predecessor in tile has been established, the respondent cannot be made to suffer the agony of the prolonged proceedings again at this stage. The Labour Court has passed a detailed order rejecting the Application for setting aside the ex parte Award, but it is not made out that any notice was issued to the Halol Nagar Palika by the Labour Court and the Labour Court did not issue notice to the Halol Nagar Palika even after the substitution of Halol Nagar Palika to step into the shoes of Halol Nagar Panchayat and they went on with the proceedings under the mistaken impression and belief that since the Nagar Panchayat was represented through the lawyer, no notice was required to be given to Halol Nagar Palika. In any case, even if it is found to be a case of negligence or little lack of vigilance, care and caution on the part of the Nagar Palika, in such like proceedings the parties can always be put to term by passing an appropriate order awarding cost to the party, who has suffered the pendency of the litigation. In this view of the matter, the Labour Court in the facts and circumstances of this case when no notice was issued to Nagar Palika ought to have accepted the Application of Halol Nagar Palika for setting aside the ex parte Award by granting appropriate amount of cost to the

respondent-workman because Nagar Palika was also at fault to some extent in not taking care of the litigation which was pending against its predecessor in title i.e. Nagar Panchayat. But it appears from the impugned order dated 6-10-95 that the Labour Court had not applied its mind at all on this aspect of the matter and holding that the Halol Nagar Palika and its officers and functionaries or the lawyer, who was representing earlier on behalf of the Halol Nagar Panchayat, were at fault, the Application has been rejected.

7. Mr. B.N.Patel appearing for Halol Nagar Palika has invited my attention to certain documents filed by the Halol Nagar Palika and on that basis an attempt was made to reveal before this court that in fact the respondent, who is contesting, had ceased to be an employee of Halol Nagar Panchayat much prior to the date on which Halol Nagar Palika came into being, nay the respondent was engaged in his private business so much so that on 22-11-87 he had moved an application before the Halol Nagar Panchayat to give him an appointment as Supervisor and in that application he had mentioned that at present his work was going on with the GIEDC and in the village and further that in this Application he had also mentioned that he had worked satisfactorily in the Panchayat in the past, on the basis of this application recommendation was made in his favour by the Public Works Committee of the Halol Nagar Panchayat and thereupon the Resolutions were passed by the Halol Nagar Panchayat giving business to him on 1% honorarium. Mr. Pathak has submitted that these documents were not there before the Labour Court and, therefore, they cannot be considered.

8. Mr.Pathak is right in making this submission that these documents, which were not there before the Labour Court, can not be considered in these proceedings, but the fact remains that there was no notice to the Halol Nagar Palika and had Halol Nagar Palika been given notice it could have produced these documents before the Labour Court also and, therefore, looking to the totality of the entire facts and circumstances of this case, as narrated herein-above, and in consonance with the principles of natural justice and the grant of reasonable opportunity and to meet the ends of justice, to afford a reasonable opportunity to the contesting party i.e. Halol Nagar Palika, I find that the impugned order dated 6-10-95 rejecting the Application of the Nagar Palika for setting aside the ex parte Award deserves to be set aside and the same is accordingly quashed and set aside. The application of the Nagar Palika for setting aside the ex parte Award is accepted and consequentially the Award

dated 19-11-94 is also quashed and set aside and the matter is remanded back to the Labour Court, Godhra to proceed with the trial of the Reference afresh after affording fresh opportunity to both the parties to file documents and lead evidence and, thereafter, decide the Reference in accordance with law after hearing both the sides, but subject to the condition that the petitioner Halol Nagar Palika shall pay a cost of Rs.2000/- to the respondent-workman for suffering the litigation. It is expected that the proceedings in the Reference shall be expedited.

9. This Special Civil Application is accordingly allowed and the Rule is made absolute in the terms as aforesaid. No order as to cost.

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